

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 11, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2665

Cir. Ct. No. 2011CV491

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MINOCQUA LAND INVESTMENTS, LLC,

PLAINTIFF-RESPONDENT,

V.

RYNDERS REALTY, INC.,

DEFENDANT-APPELLANT,

SETH E. DIZARD,

RECEIVER-RESPONDENT.

APPEAL from an order of the circuit court for Oneida County:
MICHAEL H. BLOOM, Judge. *Affirmed.*

¶1 STARK, J.¹ Rynders Realty, Inc. (“Rynders”) appeals an order granting two motions for contempt pursuant to WIS. STAT. § 785.01(1)(a) and (b). Rynders argues the circuit court erred in: (1) failing to hold an evidentiary hearing on the motions for contempt; (2) imposing remedial contempt sanctions when there was no continuing contempt; and (3) awarding duplicate attorneys’ fees. We affirm.

BACKGROUND

¶2 On February 14, 2012, Seth Dizard (“Receiver”) was appointed as a Receiver for Rynders under WIS. STAT. ch. 128. The court order enjoined Rynders and its agents² from “transferring, encumbering or otherwise disposing of any corporate assets except as directed by Receiver.” Rynders was also instructed to file a verified list of assets, liabilities, and creditors, and to provide the company’s books and records to the Receiver.

¶3 On May 30, 2013, the circuit court entered an order approving the Receiver’s motion to sell substantially all of Rynders’ assets to Rynders’ largest creditor, Minocqua Land Investments, LLC (“MLI”). The assets included rental properties located at Rainbow Lake Road and Richardson Plat Road. Rynders appealed the order approving the motion to sell on June 7 without requesting a stay of the order, and ultimately lost the appeal. *See Minocqua Land*

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² This case involves acts by Robert Rynders, the president and owner of Rynders Realty, Inc., on behalf of the corporation.

Investments, LLC v. Rynders Realty, Inc., No. 2013AP1301, unpublished slip op. (WI App Feb. 4, 2014).

¶4 After the Receiver accepted MLI's offer to purchase and the motion to sell was granted, tenants at Rainbow Lake Road and Richardson Plat Road, now owned by MLI, forwarded MLI two substantially similar letters from Robert Rynders on behalf of Rynders Realty. One dated June 12, 2013, stated:

With regard to the property at 8745 Richardson Plat Road, Rynders Realty still holds the title to this property. This is still going through the court system and a final decision has not been made. Until such time as a final decision is made, all rent payments are being held at our attorney's office in a trust account. It would be to your advantage to make your rent payments payable to the Greg Harrold³ Trust Account until such time as the courts make their final decision and Minocqua Land Investments can prove that they hold title to that property. With regard to the past due rent balance of \$1456.00, this money is still due and payable to Rynders Realty.

¶5 MLI's attorneys contacted Rynders and its attorney on June 28 demanding Rynders remit and account for all rents collected at any property owned by MLI by July 1. MLI moved for contempt on July 3. MLI asserted that without a stay pending appeal, all rent payments should have been directed to MLI, and further, that Rynders never disclosed that the properties in question were income-producing. On July 5, the Receiver also moved for contempt because Rynders failed to provide the Receiver with its books and records pursuant to the 2012 order appointing the Receiver, and because Rynders failed to inform the Receiver that the company generated any revenue.

³ A former attorney for Rynders.

¶6 Rynders submitted an affidavit in opposition to the motions for contempt, averring at the time the letters were sent to the tenants a title report indicated Rynders still held title to the Rainbow Lake Road and Richardson Plat Road properties, and that Robert Rynders had discussed the properties with the Receiver, who was disinterested in the rental proceeds.

¶7 On July 15, the circuit court conducted a hearing on the motions for contempt, where it heard arguments but did not take evidence. The affidavits and arguments of the parties showed Rynders had attended the hearing at which the circuit court approved the motion to sell the corporate assets and as a result, knew it had no interest in the properties after May of 2013. Despite attendance at that hearing and the earlier court order prohibiting Rynders from transferring, encumbering or otherwise disposing of any corporate assets except as directed by the Receiver, Robert Rynders admitted he sent letters to tenants of properties his company formerly owned. Rynders' lawyer confirmed at the hearing that Robert Rynders had received funds from the tenants and the lawyer advised him that the rents had to be forwarded to the Receiver.

¶8 The court determined Rynders failed to turn over corporate records and books for more than a year after the Receiver was appointed despite the earlier issued court order to do so. Rynders argued reliance on the title search justified the letters sent to the two tenants, but acknowledged its books and records should have been turned over to the Receiver. The circuit court concluded the information contained in a title report did not absolve Rynders' intentional violations of the circuit court's previous order. It further reasoned that an appeal does not impact the effectiveness of a judgment unless a judge has granted a stay pending appeal; that the letters sent by Robert Rynders to the two tenants "[spoke]

for themselves;” and that the Receiver’s representation that he was unaware of any income-producing properties was credible.

¶9 The circuit court found Rynders in contempt for failing to turn over its corporate books and records, and for sending letters to tenants seeking payment of rent in direct contravention of the court’s orders. Accordingly, it ordered remedial sanctions. Specifically, it ordered a full accounting, set a deadline for Rynders to make its books and records available, and awarded attorneys’ fees to MLI and the Receiver. The court said it would memorialize its findings and set the amount of the fee awards in a written order once MLI and the Receiver submitted affidavits detailing their expenses associated with bringing the motions for contempt.

¶10 Before the court issued its written order, Rynders moved to reverse the finding of contempt. The circuit court conducted a second hearing on September 10, again hearing arguments without taking evidence. In its motion and at the hearing, Rynders argued sanctions were improper because Robert Rynders spent approximately \$170,000 to keep the business afloat during the receivership—albeit, without notifying the Receiver of his actions. The court expressed confusion as to how this assertion related to the specific allegations that led to the contempt finding, as well as concern for the complete lack of communication between Rynders and the Receiver. The court denied the motion to reverse. It issued a written order confirming its finding of contempt and specifying the amount awarded for attorneys’ fees. Rynders’ subsequent motion to stay enforcement of the contempt order was granted, and Rynders now appeals.

DISCUSSION

¶11 Rynders contends the circuit court denied him due process when it failed to hold evidentiary hearings on the motions for contempt. It also claims there was no continuing contempt warranting remedial sanctions and that the court erred by awarding attorneys' fees to the Receiver and MLI for duplicate contempt motions.

¶12 However, as both MLI and the Receiver note, at no point in the proceedings did Rynders allege a lack of due process, the lack of continuing harm to justify remedial sanctions, or the impropriety of granting relief to both parties on their motions for contempt. "As a general rule, this court will not address issues for the first time on appeal." *State v. Van Camp*, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997). Our supreme court has reasoned, "Had the [party] raised this issue below, the [other party] would have had an opportunity to cure, and the trial court would have had the opportunity to consider, this claimed defect." *Id.* But, when a party raises an issue for the first time on appeal, "issues of fairness[,] notice, and judicial economy are raised." *State v. Caban*, 210 Wis. 2d 597, 605, 563 N.W.2d 501 (1997).

¶13 In the instant case, the circuit court had all of the parties before it on multiple occasions, including at two separate hearings on the motions for contempt. Rynders addressed the merits of the contempt claims and argued the finding of contempt was not warranted. However, Rynders failed to raise any of the issues it now argues at either hearing, consequently depriving the opposing parties and the circuit court of the opportunity to address the issues. Accordingly, it has forfeited its right to review on appeal. *See Van Camp*, 213 Wis. 2d at 144.

¶14 Rynders does not respond to the forfeiture arguments of MLI and the Receiver regarding the issues of continuing contempt and duplicate attorneys' fees. Arguments not refuted are deemed conceded. *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979).

¶15 Rynders nevertheless urges us to address the first issue regarding the alleged violation of its due process rights arising from the circuit court's failure to conduct an evidentiary hearing. Despite the fact it failed to raise this issue, it claims the court considered the issue and as a result, it has not forfeited its right to review on appeal. Rynders notes that during the September 10, 2013 hearing on the motion to reverse the contempt finding, the circuit court stated, "I am trying to determine ... to what extent do we need to have a hearing with evidence presented on this issue of reversing a finding of contempt" Rynders directs us to this excerpt presumably as proof that the circuit court was aware of a procedural defect but failed to act.

¶16 Further, Rynders now asserts the failure to hold an evidentiary hearing was "fatal," citing *Evans v. Luebke*, 2003 WI App 207, ¶¶24-25, 267 Wis. 2d 596, 671 N.W.2d 304. In *Evans*, the court stated the procedures for imposition of remedial sanctions must include, "in the absence of stipulated facts, an evidentiary hearing sufficient to permit the court to make specific findings regarding whether the alleged contemnor intentionally disobeyed its orders." *Id.*, ¶25. Rynders argues in this case, like *Evans*, no evidentiary hearing was held despite the existence of disputed facts. Therefore, according to Rynders, reversal of the lower court order is required, together with a remand for an evidentiary hearing. However, in *Evans*, this court also stated:

[T]he lack of a hearing and factual findings were specifically raised during Judge Guolee's consideration of

Washington's motion to reconsider. Although Judge Guolee declined to rule on it, he was clearly aware that Washington was asserting a violation of her due process rights. We are thus satisfied that Washington sufficiently raised the issue in the circuit court to have permitted that court ... to remedy the procedural deficiencies.

Id., ¶25 n.13.

¶17 There was no such awareness here. We see no indication, like in *Evans*, that the circuit court was aware Rynders believed there were procedural deficiencies. Rynders argues there were disputed facts necessitating an evidentiary hearing. However, the issues it now asserts required the production of evidence relate to whether it had earlier advised the Receiver two real properties produced income, and whether the Receiver told it to retain the income as de minimus. These issues were addressed by Rynders in an affidavit submitted to the court and fully argued by the parties at the second contempt hearing. The circuit court considered on the record whether it ought to conduct an evidentiary hearing. Despite that opportunity, Rynders failed to request an evidentiary hearing at that time, or any other time until it filed its appellate brief. Therefore, the issue was not sufficiently raised before the circuit court so as to justify our consideration.

¶18 Rynders' arguments fail on forfeiture grounds, and "[w]e are unpersuaded that justice would be served here by entertaining ... arguments where the trial court was not afforded an opportunity to do so." *Van Camp*, 213 Wis. 2d at 144. Rather, we follow the longtime precedent that cases should be decided on the narrowest possible grounds, *see State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989), and we decline to consider the merits on issues that have been indisputably forfeited. Accordingly, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

